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In the Supreme Court
of the
United States

October Term 1982

No. _____

MARVIN S. ANTELMAN,

Petitioner

vs.

MICHAEL DECATALDO
Revenue Agent

UNITED STATES OF AMERICA and
INDUSTRIAL NATIONAL BANK, and KATHY LAWSON,

Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FIRST JUDICIAL
CIRCUIT

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In the Supreme Court
of the
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No.

MARVIN S. ANTELMAN,
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MICHAEL DECATALDO,
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UNITED STATES OF AMERICA and
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Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST JUDICIAL CIRCUIT

Petitioner Marvin S. Antelman prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit , rendered in the above entitled case.

QUESTIONS PRESENTED FOR REVIEW

1. Did the Interval Revenue Service issue a summons against Tivian Laboratories, Inc. in bad faith?
2. Were due process rights of the petitioner violated by the lower courts' refusing to allow him to intervene in a third party summons proceeding?
3. Did the issuance of the summons in itself violate petitioner's right to be protected against unreasonable search and seizure and his due process rights?
4. Does the IRS third party summons procedure unconstitutionally deprive Intervenor of his right to a grand jury proceeding?

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OPINIONS OF THE COURT BELOW

The opinion of the United States Court of Appeals for the First Judicial Circuit is printed as Exhibit A in the Appendix, annexed to this petition. The order of the United States District Court of Rhode Island is contained in the appendix and marked as Exhibit B. The Order to Show Cause is also contained in the annexed appendix and marked as Exhibit C .

GROUNDS FOR JURISDICTION

Petitioner seeks review of a Memordandum and Order entered on February 22, 1982 in the

United States Court of Appeals, Petitioner cites Rule 17.1(c) of the Rules of the United States Supreme Court and Article III, Sections I and II of the United States Constitution as granting juridsiction to this Court. This case arises from 26 U.S.C. Section 7601 and the First, Fourth and Fifth Amendments of the United States Constitution.

APPLICABLE LAW

Amendment I, United States Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peacably to assemble, and to petition the Government for a redress of grievance.

Amendment IV, United States Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Amendment V, United States Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

United States Code Title 26

7601. Canvass of districts for taxable persons and object

(a) General rule. - The Secretary or his delegate shall, to the extent he deems it practible, cause officers or employees of the Treasury Department to proceed, from time to time, through each internal revenue district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects with respect to which any tax is imposed.

United States Code, Title 26

7602. Examination of books and witnesses

For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for

any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary or his delegate is authorized-

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax required to perform the act, or any other person the Secretary or his delegate may deem proper, to appear before the Secretary or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

Aug. 16, 1954, c. 736, 68A Stat. 901

United States Code, Title 26 § 7609 (AP83).

STATEMENT OF THE CASE

The instant action is one in which the IRS attempted to obtain information and data concerning an existing corporation, TILACO CHEMICALS LIMITED, by issuing an IRS Summons against a nonexistent (AP 15) company, Tivian Laboratories Incorporated. The Petitioner in this case, Marvin S. Antelman, has a proprietary interest in specific information

being identified as all financial statements of Tilaco Chemicals Limited for the years 1977, 1978, 1979, and 1980, of which Exhibits A, B, and C are examples; upon which he holds a Common Law Copyright (AP 47). The copyright protects all information in those statements (AP 48-53).

Accordingly, Petitioner initiated an intervention (AP 25-33) when it became apparent to him that these documents were in danger of being turned over to the IRS.

On September 11, 1980, the IRS issued a summons (AP 8-9), Form 2039 to obtain data and information with respect to Tivian Laboratories Inc. Inspection of the summons revealed that it did not have a Court seal as is required by Title 28, USC Section 1691, and Rule 4 of the Federal Rules of Procedure.

The IRS utilized the subterfuge of naming for its discover and investigation bank checking account numbers 43-3377447 and 43-5829809 (AP 9) held by TILACO CHEMICALS LIMITED, a separate and distinct entity from Tivian Laboratories Inc. which it specified in its summons. Tilaco maintained checking accounts at Industrial National Bank doing

business as Tivian Laboratories Co. (EX D) which the name Tilaco is simply an abbreviation of. TILACO CHEMICALS LIMITED is a Delaware Corporation (EX E) while Tivian Laboratories Inc. is now a non existent corporation, formerly incorporated in Rhode Island. This fact was stated in Court on December 29, 1980 when Richard Foster, Tivian's former Attorney stated:

> "To my understanding, your Honor, the Corporation no longer exists so that my position as Attorney for the Corporation has ceased to exist also" (AP 15).

Furthermore, that summons was indeed intended for TIVIAN Laboratories Incorporated and not for TILACO CHEMICALS LIMITED was conceded several times by the IRS.

In its petition to enforce IRS Summons of November 19, 1980, the IRS conceded that it was,

> "conducting an investigation into the tax liabilities for TIVIAN LABORATORIES Inc. for the years 1977, 1978 and 1979 as is set forth in the affidavit of said Michael DeCataldo attached hereto" (AP2) .

DeCataldo's affidavit further conceded that he was

> "conducting investigations into the tax liabilities of Tivian Laboratories Incorporated for the years 1977, 1978, and 1979" (AP 5)

and that it was necessary to investigate the records

sought by the summons,

> "in order to properly investigate and collect the federal tax liabilities of Tivian Laboratories Incorporated for the years 1977, 1978 and 1979" (AP 6).

Nevertheless, the IRS admitted it was collecting subsequent to Judge Pettine's December 30 Order

> "bank records relating and pertaining to Tivian Laboratories, Inc. and Tilaco Chemicals Ltd" (AP 38).

It may be asked as to how the IRS came about Tilaco's checking accounts? The discovery of the accounts was ancillary to investigation of Intervenor's personal income taxes (AP 56-61; AP 69-72) and the summons issued for Tivian's records was only a means of further harassing the Petitioner and gives further credence that it issued in bad faith as is evidenced by the following sequence of events:

1) In a personal income tax litigation, the IRS alleged that Petitioner filed his 1975 1040 Tax late (EX F).

2) To support his contention that he filed on time, Petitioner submitted UPS documents (EX G,H) to prove that his tax returns were sent on time via

UPS.

3) The IRS issued a summons to UPS to obtain shipping records (EXI).

4) Having obtained shipping records of that location, the IRS then utilized this information to trace checks issued by Tilaco's customers to Tilaco's bank accounts at IN Bank in Providence (AP70) and from the endorsement on the checks obtained the TILACO CHEMICALS LIMITED bank account numbers designated in its summons which is the subject of this action leading to the IRS obtaining Petitioner copyrighted financial statements.

Further evidence that the Petitioner was designated for harassment and eventual criminal prosecution by the IRS is evidenced by the following sequence of events:

1) The IRS designated the Petitioner as a Tax Protester (AP56-61) which means he was designated for criminal prosecution (AP69-72).

2) The IRS attempted to serve a second summons upon Petitioner for Tilaco's records (AP 55) on June 12, 1981 by warrantless breaking and entering (AP 54) of Tilaco's premises. This second summons involved a criminal (AP55) investigation as was

conceded by the IRS (AP 66).

These were derivatives of obtaining copies of checks drawn on Tilaco's checking account and the financial statements of Tilaco which is the subject of this appeal.

Revenue Agent, Michael DeCataldo, under oath in his affidavit stated that he had sought the information he had obtained on Tivian Laboratories Incorporated in order to "properly investigate and collect" (AP 6) its tax liabilities, and not to criminally investigate TILACO or to further audit Petitioner's tax returns.

On May 27, 1981, Judge Pettine denied Petitioner's Motion to Intervene (AP80-82). Subsequent to these events, the IRS issued 26 summonses upon Tilaco and its banks (AP 71) and requested information which could be used in a criminal investigation of Petitioner from non corporate entities related to him (AP71; AP 73-76). This action was described by three attorneys as harassment (AP 71).

On July 2, 1981, Tilaco's Accountant, Bernard Labush was visited by Michael DeCataldo and Richard Durant of the IRS. They presented him with

copies of Tilaco's Financial Statements and admitted they had gotten his name from Tilaco's financial statements. They then proceeded to copy his work papers relating to Tilaco (EX J).

The fact that the IRS obtained possession of Tilaco's financial statements (AP70) before Petitioner Due Process remedies had been exhausted was a further breaking of the numerous laws which the IRS has broken in conjunction with this action, such as its violation of Petitioner's Copyrights.

Subsequent to the IRS issuing 26 Summonses, Petitioner believed he had sufficient evidence of bad faith on the part of the IRS and filed a motion to retroactively quash the summons; on the grounds of bad faith and that Tilaco was not properly represented at the enforcement proceedings of December 29, 1980 (AP 12-22;EX K). The IRS filed an objection to this motion (AP 62). Upon the denial of this motion on July 9, 1981 (AP 81), Intervenor appealed (AP 79).

Upon appeal, the First Circuit of the United States Court of Appeals upheld the refusal of the United States District Court for the District

of Rhode Island to allow Petitioner to intervene on behalf of Tilaco Chemicals Ltd. (Feb. 22, 1982. Exhibit A)

In the same Memorandum and Order, the Court of Appeals, Chief Judge Coffin and Circuit Judges Campbell and Bownes declared that:

1. Petitioner had not carried the heavy burden of demonstrating bad faith on the part of the IRS.

2. No allegation had been made that the IRS had made a recommendation of criminal prosecution.

3. Given these facts the Petitioner had no right to intervene or for the other relief sought.

GROUNDS FOR FEDERAL JURISDICTION

The above captioned proceeding was originated by the respondents, Michael DeCataldo, Revenue Agent and the United States of America in the United Stated District Court for the District of Rhode Island pursuant to the statutory authority in Title 26, U.S.C. §7602, granted to the Internal Revenue Service to issue Third party summonses.

REASONS FOR ALLOWANCE OF THE WRIT

The lower court erred in failing to determine that the Internal Revenue Service issued a

summons in bad faith. The initial summons was directed against a non-existent corporation and was employed as a means of obtaining the tax liability of a second corporation. The summons in question was challenged and was followed by numerous summonses clearly setting forth Tilaco Chemicals, Ltd., instead of Tivian Laboratories, Inc. as a target, the latter the originally named corporation.

The summonses followed the malicious and erroneous classification of the Petitioner as a tax protestor. A pattern of coercion and harrasment by the IRS, based upon its mistaken belief (or, arguendo, correct belief) that intervenor Antelman was a "tax protester," in violation of his rights to Freedom of Speech and Association guaranteed by the First Amendment to the Constitution can be inferred from the most recent behavior of the IRS, which included several new summonses.

As part of this pattern, the IRS singled Antelman out as an example in a memorandum dated December 7, 1978, authorizing the exceptional procedure of reopening a previously examined tax year because he was a protester. See Exhibit L.

Furthermore, the IRS has, since 1978, targeted "tax protesters" for criminal inquiry, and in the period since then has increased its targets 156% from 7,100 returns in 1978 to 18,200 returns in 1980, as a method of discouraging "protest." (See Report by the Comptroller General, Ilegal Tax Protesters Threaten Tax System, G.G.D. 81-83, July 8, 1981).

It can be thus construed that Petitioner was selected for audit in order to intimidate him from associating with tax protesters in violation of his First Amendment rights of freedom of association.

The lower court also erred in failing to determine that the District Court violated the Petitioner's Fifth Amendment right to due process of law by failing to allow him to intervene in the third party summons proceeding.

The essential elements of due process at common law include the opportunity to be heard and to defend in an orderly proceeding. (Morton Grove Park District vs. American National Bank Trust Company of Chicago, 350 N.E. 2d 146 (1976). Petitioner was denied his day in court even though the subject matter of the proceeding was to gather evidence to be used

against him in what is likely to be a criminal proceeding. Justice Douglas himself has stated that "the purpose of the summons is to gather evidence for a criminal prosecution." (Donaldson vs. U.S., 400 U.S. 517 (1971).

Petitioner has been denied his right to express his own reasons why the summons should not be enforced. This violated the Petitioner's right to due process of law as defined in Rochin vs. California 342 US 16 (1952).

Due process of law is a summarized constitutional guaranty of respect for the personal immunities which are so rooted in the traditions and conscience of the nation as to be ranked as fundamental or are implicit in the concept of ordered liberty.

In Galvan v . Press, 347 US 522 (1954) it was held that "Due Process bars Congress from enactments that shock the sense of fair play , which is the essence of due process." The protection of the individual from arbitrary action is the very essence of due process of law. Slochover vs. Board of Higher Education of New York City, 350 US 551 (1956.)

By denying petitioner a hearing, as an intervenor, the lower courts denied him a basic element of the constitutional requirement of due process. Powell v. Alabama, 287 US 45 (1932)

Due to the continued pattern of harrassment and litigation the respondent has directed against petitioner, and the close relationship between petitioner and the target of the summons, it is unconscionable to deprive petitioner of the opportunity to be heard.

The lower court also erred in failing to determine that issuance of the summons violated the Petitioner's right to be protected against unreasonable search and seizure as well as his due process rights.

The Internal Revenue Service never provided Statutory notice to Tilaco Chemicals, Ltd., as required by Title 26, Section 7609, (a) (1) which notice was necessitated by the fact that Tilaco records were described, admittedly in somewhat masked fashion, in the summons. Under common law a summons is invalid if all statutory requirements are not met, and hence to enforce it would violate Petitioner's due process rights and rights to be protected

against unreasonable search and seizure, as information pertaining to the Petitioner would surface from an examination of the material the IRS is seeking. Thus, the summons is unenforceable. Reisman v. Caplin, 375 US 440, 449 (1964). United States v. Powel, 379 US 48, 57-50, (1964). United States v. LaSalle National Bank 437 US 298(1978). Clearly the summons which by its very language indicates it seeks records of all financial transactions of Tilaco without limitation is vague and unenforceable, and constitutes an exploratory "fishing expedition." This is particularly the case where those records are those of an entity or individual (ie, Petitioner) other than the taxpayer stated to be under investigation on the face of the summons. The summons was thus in violation of Petitioners Fourth Amendment right against unreasonable searches and seizures. See v. Seattle, 387 V. 541, 544 (1967.) First National Bank of Mobile v. United States, 160 F. 2d 532 (5th Cir. 1947). Hubner v. Tucker 245, F. 2d 35 (9th Cir. 1951) See also Venn v. United States, 400 F. 2d. 207 (5th Cir. 1968). Local 174 v. United States,

240 F.2d 387 (9th Cir, 1956). United States v. Luther, 481 F 2d. 429 (9th Cir. 1973).

The Internal Revenue Service's third party summons procedure is arguably unconstitutional because it prematurely deprives the target of the investigation of his common law, constitutional right to be heard by a grand jury of his peers.

In Corpus Juris Secundum, a grand jury is defined as a:

> body of men who, according to law, are selected and summoned to serve before a competent court and are by such court impaneled, sworn and charged to inquire with regard to crimes committed within its jurisdiction and to present all offenders against the law. It is an inquisitorial and accusatorial, rather than a trial body, and except in some states, is not regarded as a judicial body or tribunal.
>
> 38 CJS 980

The Fifth Amendment of the United States Constitution states:

> No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury.

Is a tax crime an infamous crime? The answer to this is an unequivocal "yes". Any crime

in which falsification is an element is an infamous crime at common law. See Mackin v. U.S., 117 US 348 (1886); Government of Virgin Islands v. Toto, C.A. Virgin Islands 529 F2d, 282 (1976).

At this point if one inquires as to whether the grand jury is a right stemming from the common law and under the additional constitutional umbrellas of the Seventh Amendment there is no doubt as to the answer:

> The institution of the grand jury is of very ancient, common law origin. It goes back many centuries to England. Maley v. District Court of Woodbury, 226 NW. 815 Iowa (1936)

The grand jury's inquisitorial function is replaced by the IRS third party summons procedure without any of the safeguards of the former. Probably the greatest damage done to the equal protection and due process rights of the Intervenor is the failure of the federal government to provide unbiased individuals as his "inquisitors" as a grand jury would hopefully provide. A grand jury would provide intervenor with a randomly selected group of individuals who would not have had the same long and unpleasant course of dealings with the

Intervenor as has the IRS. Instead, the IRS, influenced by years of hostility and apparently under the mistaken notion that Intervenor is a tax protestor, is conducting a wide investigation of the Intervenor with the primary motivation apparantly being to punish him for exercising certain First Amendment rights.

There are other safeguards, inherent in the grand jury system which are lacking in the IRS summons procedure. For example, the grand jury is under the supervision of the federal court system whereas the IRS summons procedure is under the executive branch of the federal government and has historically proven to be used for political purposes.

Also in a grand jury, counsel has the opportunity to object to unfit jurors. Obviously in the instant case Intervenor has not had the opportunity to object to any Revenue agents involved in his case, even though their records released pursuant to Freedom of Information Act requests indicate that said agents have classified Intervenor according to religious and political labels.

The particular characteristics of a grand jury in which individuals who are unlikely to know each other or to have knowledge of irrelevant details about the witness, and most importantly, have no emotional feeling as a result of working on the case for years, lend themselves to a far more equitable result for taxpayers in these investigations.

Because the IRS summons procedure violates all of the above safeguards envisioned by our founding fathers when they included the grand jury's role in our Constitution, Intervenor asks this honorable Court to declare Title 26 of the United States Code § 7601, 7602 and 7609 unconstitutional which may be construed to authorize the violation of the Fifth Amendment.

CONCLUSION

The WRIT OF CERTIORARI should be granted, to vindicate the principles of the First, Fourth and Fifth Amendments of the United States Constitution which have been violated by the unrestrained fishing expedition of the Internal Revenue Service against the petitioner.

The petitioner has frequently expressed his political views and is being punished for them. The sheer denial by the District Court to allow the petitioner to raise constitutional objections to summons enforcement on the corporation's behalf, as well as on his own behalf is indicative of a policy which has been tolerated for too long.

To safeguard petitioner's rights and those of other Americans against an agency of the federal government whose name has become synonymous with Inquisition this Honorable Court should review the judgement of the United States Court of Appeals for the First Judicial Circuit.

Respectfully submitted.

Marvin S. Antelman

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Tel: (617) - 527-5908

TO: SEYMOUR POSNER ESQ.
Assistant United States Attorney
P. O. Box 1401
Providence, Rhode Island 02901

CERTIFICATION OF MAILING

I hereby certify that on May 11, 1982, I did deliver in hand three copies of the above Petition with Exhibits and Appendix to, Seymour Posner, Esquire at P.O. Box 1401, Providence, Rhode Island 02903, and in hand to the law offices of Stephen Finn, Esq. of the firm Hinckley, Allen Et. Al., counsel for INBANK.

Marvin S. Antelman

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 81-1556.

UNITED STATES OF AMERICA,
AND MICHAEL DECATALDO, REVENUE AGENT,
Petitioners.

v.

INDUSTRIAL NATIONAL BANK, ET AL.,
Respondents.

MARVIN S. ANTELMAN, ET AL.,
Intervenors, Appellants.

BEFORE COFFIN, Chief Judge,

CAMPBELL AND BOWNES, Circuit Judges.

MEMORANDUM AND ORDER

Entered February 22, 1982

On December 30, 1980 the district court ordered enforced an Internal Revenue Service summons directing a bank and its employees to produce certain records of a taxpayer, Tivian Laboratories, Inc., also known as "Tivian Laboratories Co. d/b/a Tilaco Chemicals LTD". On April 16, 1981, appellant Marvin Antelman, whose records are not a subject of the summons, moved to intervene and for a "writ of injunction" aimed at setting aside the IRS summons. The district court denied the motion on grounds of res judicata and also denied subsequent motions to compel discovery and to quash the summons.

Appellant sought to intervene on grounds that his alleged status as a shareholder and president of Tilaco Chemicals Ltd., a corporation, entitled him to standing pursuant to 26 U.S.C. § 7609. The cited section of the Internal Revenue Code confers no such standing on shareholders or officers of a corporate taxpayer. Moreover, only a licensed attorney may represent a corporation in the district court. American Metals Service Export Co. v. Ahrens Aircraft, Inc., No. 81-1185, slip op. at 2 n.2 (1st Cir. Dec. 14, 1981); In re La Colinas Dev. Corp., 585 F.2d 7, 11 (1st Cir. 1978), cert. denied, 440 U.S. 931 (1979).

Appellant's various motions were also based on statements to the effect that IRS wished to examine the corporate records for the light they would shed on appellant's transactions with the corporations. Appellant alleged in this regard that he was the subject of a criminal investigation by IRS. He did not allege that a recommendation of criminal prosecution had been made at the time of the summons enforcement action in the district court, and he has failed to carry the heavy burden of demonstrating bad faith on the part of the IRS. In these circumstances, appellant had no right to intervene or for the other relief sought. See United States v. LaSalle National Bank, 437 U.S. 298 (1978); Donaldson

Best Copy Available

v. United States, 400 U.S. 517 (1971); United States v. Newman, 441 F.2d 165, 172-73 (5th Cir. 1971); United States v. J. Joseph Cartland, Inc., 79 F.R.D. 148, 150-51 (D. Md. 1978).

The orders of the district court are affirmed.*

---

*As appellees correctly note, the notice of appeal was untimely as to the 1980 orders. We accordingly have no jurisdiction over those orders.

By the Court:

Dana K. Gallup

Clerk.

B

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and MICHAEL DE CATALDO, Revenue Agent,	)	
Petitioners	)	
vs.	)	C.A. No. 80-0595
INDUSTRIAL NATIONAL BANK and KATHY LAWSON, Assistant Manager,	)	
Respondents	)	

ORDER

This cause came on to be heard before Chief Judge Raymond J. Pettine on December 29, 1980, upon the filing of a Petition to Enforce an Internal Revenue Service Summons with Exhibits attached thereto and the issuance by this Court on December 5, 1980 of its Order to Show Cause why the Respondents should not be compelled to obey the Internal Revenue Service Summons served upon them on September 11, 1980.

Andrew J. Belechinsky, President of Tivian Laboratories Inc., the corporate taxpayer under investigation, whose records are being sought from the Respondents herein, appeared at the December 29, 1980 hearing and read into the record a Special Appearance and Response to the Order to Show Cause, which was filed and made part of the record in this case.

Upon consideration of the pleadings and exhibits herein, it is

O R D E R E D

that the Respondents shall comply with and obey forthwith the Summons, and each and every requirement thereof served upon them on September 11, 1980 and shall produce the books, papers,

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records or other data required and called for by the terms of said Summons before Michael DeCataldo, Revenue Agent, or any other proper officer or employee of the Internal Revenue Service on January 15, 1981, at 10:00 a.m. at the Internal Revenue Service office, 130 Broadway, Providence, Rhode Island.

By Order,

Deputy Clerk

ENTER:

RAYMOND J. PETTINE
Chief Judge
United States District Court

12/3/80

FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and MICHAEL DE CATALDO, Revenue Agent, Petitioners	)	80-0595
vs.	)	CIVIL ACTION NO.
INDUSTRIAL NATIONAL BANK and KATHY LAWSON, Assistant Manager, Respondents	)	

C

ORDER TO SHOW CAUSE

Upon the Petition, the Exhibits attached thereto, the Affidavit of Michael DeCataldo, Revenue Agent of the Internal Revenue Service, and upon the Motion of Paul F. Murray, United States Attorney for the District of Rhode Island, and Seymour Posner, Assistant U.S. Attorney, it is

ORDERED, that Respondents, Industrial National Bank and Kathy Lawson, Assistant Manager, appear before the United States District Court for the District of Rhode Island, presided over by the undersigned in his courtroom in the U.S. Courthouse, in Room 309, Providence, Rhode Island, on the 29th day of December, 1980, at 9:30 a.m. to show cause why they should not be compelled to obey the Internal Revenue Service Summons served upon them on September 11 1980. It is further

ORDERED, that a copy of the Order together with a Petition and Exhibits thereto be personally served upon respondents Industrial National Bank and Kathy Lawson, Assistant Manager, on or before Dec. 10, 1980. It is further

ORDERED, that within 10 days of service of a copy of this Order and the Petition and Exhibits thereto, the respondents, Industrial National Bank and Kathy Lawson, Assistant

Petition supported by appropriate affidavit(s) as well as any motions the respondents desire to make. All motions and issues raised by the respondents will be considered upon the return date of this Order. Only those issues raised by motion or brought into controversy by the responsive pleadings and supported by affidavit(s) will be considered at the return of this Order, and any uncontested allegations in the Petition will be considered as admitted.

Dated at Providence, Rhode Island, this 3rd day of December 1980.

Raymond Pitt
Chief Judge
12/4/80

Best Copy Available

For Deposit Only
Pay To The Order Of
INDUSTRIAL NATIONAL BANK
To The Credit Of
Tivian Laboratories , Co (Tiaco
43:5629808

State of DELAWARE

Office of SECRETARY OF STATE

I, Glenn C. Kenton, Secretary of State of the State of Delaware,

do hereby certify that TILACO CHEMICALS LTD.

is duly incorporated under the laws of the State of Delaware and is in good standing and has a legal corporate existance so far as the records of this office show, as of the date below shown.

Glenn C. Kenton, Secretary of State

BY:

DATE August 6, 1981

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In Re: Irvin S. & Sylvia J. Antelman

F

Schedule 15

Explanation of Adjustments

3. Standard Deduction (3

You are allowed a standard deduction of $1,[illegible] for the 1975 taxable year.

5. Exemptions (4,[illegible])

You are allowed a deduction of $4,[illegible] for six exemptions.

Since your income tax return for the 1975 taxable year was not filed within the time prescribed by law and you have not shown that the failure to file on time was due to reasonable cause, 25 percent of the tax is added as provided by section 6651(a) of the Internal Revenue Code.

Part of the underpayment of tax for the 1975 tax year is due to negligence or intentional disregard of rules and regulations. Consequently, the 5 percent addition to the tax is charged as provided by section 6653(a) of the Internal Revenue Code.

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United Parcel Service

PICKUP RECORD

32

55471538

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SHIPPER TRACER

United Parcel Service

H

1 11 74

P0114022

471 1611

4 14 76

55471538

TIVIAN LAB

130 SILVER [illegible]

021221

PROVIDENCE RI 02904

NO ATLANTIC BOSTON ANDOVER MA 01810

100

1/1

4/ 15/ 76

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Form 2039 A
(Rev. 3-77)

Summons

In the matter of the liability of
Tivian Laboratories Incorporated
333 Silver Spring Street
Providence, RI 02904

Internal Revenue District ... Providence

Periods ... 1977, 1978, 1979

The Commissioner of Internal Revenue

To ... Edward J. Correia
United Parcel Service
South New England District

At ... 90 Locust Street
Hartford, CT 06114

You are hereby summoned and required to appear before Michael DeSotelde, Revenue Agent an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the person identified above for the periods shown and to bring with you and produce for examination the following books, records, papers, and other data:

For the years 1977, 1978, and 1979

All records relative to financial transactions between United Parcel Service and Tivian Laboratories Inc., account number 021221, including but not limited to the following:

Shipped to Tivian: Date of delivery, from whom shipped, address, description of goods and cost - name of driver

Shipped from Tivian: Date of pick-up, to whom shipped, address, description of goods and cost - name of driver

Business address and telephone number of Internal Revenue Service officer named above:

333 Centerville Road, Route 117, Warwick, RI 02886 Tel. 737-7337

Place and time for appearance:

at 333 Centerville Road, Route 117, Warwick, RI 02886

on the 10th day of June 1980 at 10:00 o'clock A M

Issued under authority of the Internal Revenue Code

this 15th day of May 1980

Michael DeSotelde
Signature of Issuing Officer

Revenue Agent
Title

David L. Tuscon
Signature of Approving Officer
(if applicable)

Group Manager - 65
Title

Part A—To be given to person summoned

Form 2039-A (Rev. 3-77)

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J

AFFIDAVIT

I, Bernard Labush, having an address of 67 Jefferson Blvd, Warwick, RI, hereby affirm that on July 2, 1981, I was visited by two IRS Agents who identified themselves as Michael DeCataldo and Richard Durant. These agents showed me the Financial Statements that they maintained they had obtained from the Industrial National Bank and requested my work papers for TILACO CHEMICALS LIMITED for the years 1977-1980 which I used in my accounting and the entire file I had on that company, including papers considered proprietary by Marvin S. Antelman. Since I was under the opinion that they already had all the financial information for those years, I allowed them to photocopy all my papers including the financial statements for 1980 plus the 1977-1980 inventories, which I did not know they had not obtained.

They also asked me if I knew of any fraud concerning TILACO and its dealings. I told them that in the four years I have been the accountant for TILACO, I have found nothing out of order in the receivables, payables, checks issued, purchases and journal entries which I have audited.

SIGNED: Bernard Labush

Bernard Labush

DATE: Sept. 3 1981

WITNESS: Sheryl E Labush

WITNESS: David C Gumbo

I, Richard K. Foster, Esq., being duly sworn and under oath do hereby make this AFFIDAVIT and say that:

1. I am an attorney duly licensed in all Courts within the State of Rhode Island and before the Federal District Court for the State of Rhode Island.

2. On December 29, 1981, I was present in Federal District Court before Honorable Judge Raymond Pettine in reference to the matter of United States of America et al vs Industrial National Bank et al (80-0595).

3. At the call of the calendar for that day above mentioned, and before Judge Pettine, I was sitting in the audience of the Court as a spectator to the proceedings that were going to commence in the above named matter.

4. I was not present to represent either Tivian Laboratories, Inc. nor to represent Tilaco Chemicals Ltd.

5. Prior to the December 29, 1981 hearing on this matter, I had been the attorney of record for Tivian Laboratories, Inc. but my position had expired when the corporation ceased to exist sometime prior to the above hearing.

6. Therefore, I could not represent the Tivian Laboratories, Inc. corporation in this matter.

7. Furthermore, when asked by Judge Pettine if I represented Tivian Laboratories, Inc. I informed the Court that I did not represent them in this matter. (See transcript - copy enclosed).

8. Furthermore, at no time did I represent Tilaco Chemicals Ltd. in the Court hearing nor did I enter an appearance in this matter as required by the Rules of the Court.

9. My only representation of Tilaco Chemicals Ltd. was when I was retained by the President of Tilaco Chemicals Ltd. to send a letter to Ms. Kathy Lawson of the Industrial National Bank requesting that she not comply with the previously issued Internal Revenue Service summons. I was not retained by the corporation to represent them at any court action or any further other than the request to Ms. Lawson.

10. At this present time, I do not represent Tilaco Chemicals Ltd. nor do I represent Tivian Laboratories, Inc.

11. Should the Court require any further information in reference to this hearing, I shall be more than happy to provide same at the Court's convenience.

This AFFIDAVIT submitted and prepared under oath this 4th day of September, 1981 in Lincoln, Rhode Island.

Richard K. Foster

Richard K. Foster

STATE OF RHODE ISLAND
PROVIDENCE, SC.

Subscribed to and sworn to before me this 4th day of September, 1981 by Richard K. Foster, known to personally by me, in Lincoln, Rhode Island.

Beatrice Belisle

Notary Public
My commission expires on
June 30, 1985

REOPENING MEMORANDUM

REQUEST FOR:

☒ APPROVAL TO REOPEN A CLOSED EXAMINED CASE

☐ ISSUANCE OF LETTER 692, NOTICE OF DISALLOWANCE

DISTRICT CASE: 05

TAXPAYER'S NAME AND ADDRESS OR LATEST KNOWN ADDRESS (if deceased)

HARVEY S & SYLVIA ARTZ
5 PROSPECT AVENUE
[illegible], MA. 02160

SECTION A - CLEARANCE RECORD

TO	(Number first in order routing request)	DECISION	SIGNATURE	SYMBOLS	DATE CLEARED
1	GROUP MANAGER	Approve	[illegible]	[illegible]	12-[illegible]
2	CHIEF, [illegible]	Approved	[illegible]	EX: R	12-26-[illegible]
3	CHIEF, EXAMINATION Division	Agree	[illegible]	[illegible]	12/[illegible]
4	DISTRICT DIRECTOR	/	[illegible]		[illegible]
	AREA EXAMINATION OFFICE DIRECTOR, DIO				
	[illegible]				

SECTION B - [illegible]

1 REASON FOR REQUEST (Number of the appropriate block)

☐ A. EVIDENCE OF FRAUD, CULPABLE NEGLIGENCE, COLLUSION, MISREPRESENTATION OR WITHHOLDING OF MATERIAL FACTS

☐ B. SUBSTANTIAL ERROR

☒ C. REVENUE AGENT'S REPORT, CRIMINAL REFERRAL, LETTER FROM TAXPAYER, CONFERENCE, LETTER FROM PRACTITIONER, GO [illegible] TAXPAYER

2 FACTS

	PERIOD	YEAR	PERIOD	YEAR
A. TAX RETURN	1040	7612	n/a	n/a
B. EXPIRATION DATE	04-15-80			
C. METHOD OF PREVIOUS EXAMINATION	[illegible] ATTACHED			
D. TAX SHOWN ON RETURN OR AS PREVIOUSLY ADJUSTED	$618.13			
E. ESTIMATED ADDITIONAL TAX	SEE ATTACHED			

3 NARRATIVE JUSTIFICATION (Form 7249)

SIGNATURE & BADGE (Area Code)

[signature]

TITLE: REVENUE AGENT

ORGANIZATIONAL SYMBOLS: [illegible] 1104

DATE: 12-07-79

SECTION C - RESULTS (Complete only if use A required)

1 DATE OF AUDIT

	YEAR	AMOUNT	YEAR	AMOUNT
A. ADDITIONAL TAX		$		$
B. OVER ASSESSMENT				

INSTRUCTIONS

REQUEST BLOCK - Check the [illegible] block if response does not require additional inspection of the taxpayer's books of account or [illegible] of such additional [illegible]

SECTION A - Insert the words "[illegible]" if clearance is not required, i.e., Chief, Audit Division, [illegible] to dismiss [illegible] such persons. All individuals signing or disapproving the request shall sign their names, insert the [illegible] symbols, and in the block entitled "Decision" write the word "Approved" or "Disapproved." Only Part I of [illegible] used to signify other parts may be ignored.

SECTION B - For the taxpayer, use the following Section 7 only (2) Last (3) Conference. Letter 1990 may be used for purpose. See IRM 4563 for details concerning [illegible] protective and disapproved actions.

SECTION C - Indicate whether tax change is agreed or disagreed to by inserting "A" or "D" in the appropriate column.

Form 4605 (REV. 7-72) 37 DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE

PART I

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Form 886-A (February 1980)	EXPLANATION OF ITEMS	Sheet 1
Name of Taxpayer: MARVIN S & SYLVIA ANTELMAN		Year / Period Ended: 7612

2.c. The method of previous audit was a change made by the Andover Service Center referred to the Collection DIVISION for follow-up and closing. Report form 1902X was issued to the taxpayer.

2.d. There is no estimate of additional tax due(See narrative justification)

3. NARRATIVE JUSTIFICATION

This request for reopening is made because of audit of related corporation, Tivian Laboratories. The taxpayer is involved in the laetrile movement and has failed to cooperate in substantiating items on the corporate return that affect his personal 1040.

The agent is requesting this reopening because it is felt that the failure to reopen this related case would result in establishing a precedent that would seriously hamper subsequent attempts by the Service to take corrective action.

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In the Supreme Court

of the

United States

October Term 1982

No.

MARVIN S. ANTELMAN,	:
Petitioner	:
vs.	:
MICHAEL DECATALDO,	
Revenue Agent	:
UNITED STATES OF AMERICA and INDUSTRIAL NATIONAL BANK, and KATHY LAWSON,	
Respondents	:

PETITIONER'S

APPENDIX